

In the United States Court of Federal Claims

No. 08-840 C
(Filed June 4, 2010)

KAREN MCBRIEN,)
Plaintiff,)
v.)
THE UNITED STATES,)
Defendant.)

ORDER

On March 26, 2010, the United States Court of Appeals for the Federal Circuit issued its mandate affirming the dismissal of plaintiff's complaint(s) for lack of jurisdiction.

By Order, filed April 2, 2010, four motions by plaintiff to reinstate her claim were filed by leave of court and, upon filing, were denied.

By an "AMENDED MOTION TO REINSTATE CLAIM," dated May 21, 2010, plaintiff again seeks to reinstate her dismissed claim. Plaintiff also seeks appointment of a special master. In addition, plaintiff submits a "MOTION TO REQUEST LEAVE OF COURT TO FILE LATE BRIEF" in an unrelated case pending in a California State Court.

As noted in the April 2, 2010 Order, plaintiff mistakenly concludes that Congress has assigned jurisdiction to this court over tort claims "for personal injuries resulting from exposure to agents from governmental programs . . ." simply because the Congress has assigned jurisdiction to this court to compensate injuries caused by certain specific listed vaccines. *See* National Childhood Vaccine Injury Act of 1986, 42 U.S.C. § 300aa-1 to 34 (2006). Plaintiff does not claim a vaccine injury covered by this 1986 Act and the court does not possess jurisdiction over claims based on tortious non-childhood vaccine personal injuries such as plaintiff pleads. 28 U.S.C. § 1491(a)(1); *Brown v. United States*, 105 F.3d 621, 623 (Fed. Cir. 1997); *Mendez-Cardenas v. United States*, 88 Fed. Cl. 162 (2009).

In this circumstance plaintiff has, again shown no viable basis on which her dismissed claim could be “reinstated” or a special master appointed.

Accordingly, it is **ORDERED** that:

(1) Plaintiff’s AMENDED MOTION TO REINSTATE CLAIM, dated May 21, 2010, and motion to appoint a special master^{1/}, be filed by leave of court;

(2) Upon their filing as provided in (1) these motions shall be **DENIED**, in that jurisdiction over the claim pleaded remains lacking as has been previously determined and affirmed upon appeal; and

(3) The MOTION TO REQUEST LEAVE OF COURT TO FILE LATE BRIEF in the Court of Appeals, State of California, Fifth Appellate District, submitted together with the aforementioned documents shall be returned unfiled to plaintiff.

James F. Merow
Senior Judge

^{1/} The authority to appoint a special master for matters other than childhood vaccine injury cases resides solely in the chief judge of the Court of Federal Claims. 28 U.S.C. § 798(c). The eight special masters appointed under the National Childhood Vaccine Injury Act of 1986 devote their full time to the resolution of the many vaccine cases filed under that Act. *See* 42 U.S.C. § 300aa-12(c).